

**BEFORE THE ARKANSAS DEPARTMENT OF LABOR**

*In The Matter of  
Walker Landscape Management, Inc.*

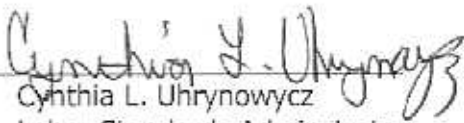
**Final Order**

On July 12, 2006, this matter has come before the Director of the Arkansas Department of Labor for consideration. After consideration of all facts and matters, the following **Final Order** is entered.

On June 22, 2006, a notice of assessment for overtime wages owed was sent to ***Walker Landscape Management, Inc.*** ("Respondent"). An opportunity to contest the findings and request an administrative hearing was given, but Respondent has failed to request an administrative hearing.

THEREFORE, it is hereby ORDERED that ***Walker Landscape Management, Inc.*** is indebted to the Arkansas Department of Labor in the amount of **One Thousand Five Hundred Twenty Three Dollars and Sixty Six Cents (\$1,523.66)**.

**JAMES L. SALKELD, DIRECTOR**

By:   
Cynthia L. Uhrynowycz  
Labor Standards Administrator  
Arkansas Department of Labor  
10421 West Markham  
Little Rock, AR 72205  
(501) 682-4500

## **BEFORE THE ARKANSAS DEPARTMENT OF LABOR**

### ***In The Matter of Darrell Coleman vs. Commercial Transportation, Inc.***

#### **ORDER**

##### **I. Introduction**

Pursuant to the authority of the Director of the Arkansas Department of Labor granted by Arkansas Code Annotated §11-4-301 et seq., a hearing was held on July 13, 2006 at 2:00 p.m. in the offices of the Arkansas Department of Labor. The purpose of the hearing was to receive evidence and hear testimony in consideration of the appeal filed by Darrell Coleman from a Preliminary Wage Determination Order finding Commercial Transportation, Inc. was not indebted to Darrell Coleman. Appearing at the hearing were the following: the claimant, Darrell Coleman and Jon Peek, Operations Manager of Commercial Transportation, Inc. From the evidence and testimony presented, the following final administrative order is made.

##### **II. Findings of Fact**

Mr. Coleman filed a wage claim against Commercial Transportation, Inc. for unpaid wages of \$561.09 for the payroll periods beginning March 27, 2006 through April 25, 2006. The claim was for \$327.50 in unpaid wages for 32.75 hours of deadhead drive time and \$233.59 for reimbursement of a deduction from the claimant's final check for a service charge. The employer denied the wages claimed. A preliminary wage determination order was issued June 2, 2006 finding that Mr. Coleman was not entitled to any wages claimed. Mr. Coleman filed a timely appeal and requested an administrative hearing on the matter. A certified letter informing both parties of the hearing date was sent by certified mail on June 19, 2006.

Mr. Coleman testified at the hearing that he was paid 25% of the line haul charge as agreed upon for each and every load. Mr. Coleman also testified that he did not receive \$10.00 per hour for 32.75 hours of deadheading to pick up each load, which totaled \$327.50. Deadheading is defined as time spent driving a truck without freight. Mr. Coleman referenced a section of the company policies and guidelines that stated approved hourly pay is \$10.00 per hour. Mr. Coleman also testified that there is no wording in the policy concerning payment for deadheading and that no one ever told him that he would receive \$10.00 per hour for deadhead drive time.

Mr. Peeks testified that there was never any agreement to pay Mr. Coleman or any other employee \$10.00 per hour for deadheading and that all pay was commissioned based. Mr. Peeks stated that the deadhead time is included in the line haul charge and that the load pays what it pays, which is 25% of the line haul charge. Mr. Peeks also stated that the \$10.00 per hour is paid when approved to drivers who are required to perform work when there is no revenue generated, such taking trailers to a shipper, picking up an empty trailer, taking a trailer to a shop or taking a truck to a shop. Mr. Peeks stated that the only time he would pay \$10.00 per hour is when no revenue was generated because he would not ask someone to do something for free.

In regards to the \$233.59 deduction for the service charge, Mr. Coleman testified that he informed the company of a malfunctioning fuel gauge for the truck he was driving. Mr. Coleman stated that the first time he filled up the truck, the fuel gauge did not move from empty. Mr. Coleman testified that he informed Commercial Transportation, Inc. of the faulty fuel gauge and was told that a replacement part would be ordered. Mr. Coleman stated that he ran out of gas in the truck twice and that on the both occasions, the company sent someone to put enough fuel in his truck to get him to the next gas station. Mr. Coleman testified that

Commercial Transportation paid \$226.24 for the first service charge and \$233.59 for the second service charge when he ran out of gas. Mr. Coleman stated that Commercial Transportation, Inc. paid for both charges but withheld only the second charge of \$233.59 from his last check.

Mr. Peeks testified that there is no law that says a fuel gauge must work and that it was not a safety issue. Mr. Peeks also stated that anything that was safety sensitive would prevent him from putting that truck on the road. Mr. Peeks testified that he felt justified to deduct the service charge since this was the second time Mr. Coleman had run out of fuel.

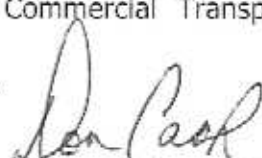
### **III. Conclusions of Law**

In wage claim matters, the claimant has the burden of proof. That burden may not be met by the claimant's testimony alone, unless such testimony was uncontroverted. Furthermore, the employer has the burden to prove entitlement to a set-off against wages.

Mr. Coleman's claim of \$327.50 for 32.75 hours of deadheading at \$10.00 per hour is unfounded. Mr. Coleman did not present sufficient evidence to show an agreement of payment of \$10.00 per hour for deadheading above and beyond the agreement to pay 25% of the line charge.

Mr. Coleman's claim of \$233.59 for the service charge, which had been deducted from his last check as a set-off in wages, has merit. Commercial Transportation, Inc. was at fault for not repairing the fuel gauge on the truck driven by Mr. Coleman in a timely manner and it is clear that Mr. Coleman did not receive any benefit from this charge.

**THEREFORE** it is hereby **ORDERED** that Commercial Transportation, Inc. is indebted to Darrell Coleman for a total amount of \$233.59.

  
Hearing Officer

8-9-06  
Date